



**Chamber of Commerce of
the United States of America**

**Association of American Chambers
of Commerce in Latin America**



1615 H Street NW, Washington, D.C., 20062 • tel: +1-202-463-5485 • fax: +1-202-463-3126

**Hearing of the House of Representatives
Committee on International Relations
Subcommittee on the Western Hemisphere**

“Transparency and Rule of Law in Latin America”

Wednesday, May 25, 2005

1:30 p.m.

2172 Rayburn House Office Building

Testimony on behalf of the
U.S. Chamber of Commerce
and the
**Association of American Chambers of Commerce
in Latin America (AACCLA)**

John Murphy
Vice President, Western Hemisphere Affairs
U.S. Chamber of Commerce
*and Executive Vice President, Association of American
Chambers of Commerce in Latin America (AACCLA)*

On behalf of the U.S. Chamber of Commerce and the Association of American Chambers of Commerce in Latin America (AACCLA), I am pleased to present the House Committee on International Relations Subcommittee on the Western Hemisphere with this testimony regarding “Transparency and Rule of Law in Latin America.”

The U.S. Chamber is the world’s largest business federation, representing more than three million businesses of every size, sector and region. AACCLA represents 23 American Chambers of Commerce in 21 Latin American and Caribbean nations, and its 20,000 member companies manage over 80% of all U.S. investment in the region.

This is a timely hearing on a key set of issues facing Latin America and the Caribbean. The region’s embrace of democratic norms over the past 25 years has been remarkable. But in some countries, poor economic policy and weak political parties, among other factors, have recently endangered this progress. The sudden change of government in Ecuador earlier this year underscores the fact that democratic elections do not by themselves guarantee “the rule of law and not of men,” in Thomas Jefferson’s phrase.

While questions of the rule of law in the region may legitimately be addressed in a number of ways, this testimony focuses on one practical question: What can the United States do to enhance the progress achieved toward democratic governance and the rule of law in Latin America and the Caribbean during the past two decades?

To our analysis, the promulgation of ambitious and comprehensive free trade agreements (FTAs) would do more to enhance the rule of law and transparent governance in the region than any other possible step the United States could take. Such agreements include the recently implemented U.S.-Chile FTA; the U.S.-Dominican Republic-Central America Free Trade Agreement (DR-CAFTA), which the Congress will likely consider in the weeks ahead; and the U.S.-Andean and U.S.-Panama FTAs, which are in the final stages of negotiation. (Congressional approval of DR-CAFTA is the top international trade priority of 2005 for the U.S. Chamber and AACCLA.)

The commercial benefits of these FTAs are substantial. The U.S.-Chile FTA, for instance, generated a 33.5% surge in U.S. exports to Chile in 2004, the year it was first implemented. But the benefits of these FTAs go beyond opening overseas markets for America’s workers, farmers, and companies.

As a point of departure, consider an observation offered by one of the Central American trade ministers who led the DR-CAFTA negotiations for his country. He commented that the agreement contains 15 years’ worth of economic reforms in a single package. He noted that embracing such reforms in the context of a free trade

agreement would allow his country — through a single legislative act — to seize the gains of transparent governance and the rule of law far more rapidly than would otherwise be possible.

In addition to FTAs, the U.S. Chamber and AACCLA are convinced that the adoption of trade facilitation (TF) measures represents an excellent opportunity to secure transparent, rules-based procedures in international commerce. Accordingly, after a discussion of FTAs, this testimony will address TF as well.

How FTAs Enhance Transparent Governance and the Rule of Law

For emerging markets, FTAs assist in the creation of a transparent, rules-based economic environment, which is a critical element in the success of democratic institutions and market-based economic policies. Using DR-CAFTA as the prime example for this statement, it is remarkable to note the degree to which this agreement will guarantee transparency in government procurement. DR-CAFTA will require competitive bidding for government contracts in Central America and the Dominican Republic, with extensive information relating to these opportunities to be posted on the Internet. By ensuring that these opportunities are not open solely to well-connected insiders, DR-CAFTA will serve as a vaccine against crony capitalism.

To pursue the example further, DR-CAFTA will open to competition sectoral markets that have until now remained the province of monopolists and oligopolists. For example, Costa Rica's telecommunications and insurance markets are at present the exclusive domain of state-owned entities (with a few exceptions for particular services). The upshot is that telecommunications services in Costa Rica are expensive, and service is relatively poor. DR-CAFTA will open these markets to competition and provide a level playing field in the regulatory environment for telecommunications and insurance in all of the DR-CAFTA signatory nations.

Another instance where DR-CAFTA will improve the business climate in Central America and the Dominican Republic relates to dealer protection laws. Such laws represent a significant trade and investment barrier for U.S. companies seeking to do business in the region. In some cases, these laws provide local dealers and distributors of products, services, and trademarks owned by foreign principals with exaggerated protections, locking manufacturers into exclusive dealership arrangements. At times, U.S. companies have no way to discipline a nonperforming dealer. The recently negotiated DR-CAFTA dealt with this matter effectively, and will do away with laws that allow well-connected insiders to take advantage of the law in an unfair way.

In addition, DR-CAFTA represents an important opportunity to strengthen legal protections for intellectual property rights in the region as well as the actual enforcement of these rights. In the 21st century, the dynamism of the U.S. economy

is increasingly dependent on the ability of workers and companies to retain control of the intellectual property they create. Inasmuch as no country has a monopoly on creativity, the same holds true in emerging markets such as the DR-CAFTA countries.

How FTAs Assist in the Resolution of Commercial Disputes

In addition, free trade agreements such as DR-CAFTA strengthen the rule of law through the establishment of arbitration mechanisms designed to provide timely recourse to an impartial tribunal. Such “Investor to State Dispute Settlement Procedures” (ISDPs) are included in over 40 bilateral investment treaties (BITs) between the United States and other countries, many of which have been in force for decades, as well as in all U.S. free trade agreements.

ISDPs provide for arbitral panels to resolve disputes under international legal standards that mirror U.S. Constitutional protections against arbitrary government actions and against taking of property without compensation. In developing countries where local judiciaries are at times slow, ineffective, or corrupt, U.S. companies have benefited from recourse to ISDPs. In addition, the mere existence of such provisions appears to serve as an admonition to governments to avoid arbitrary actions in commercial disputes lest the case wind up before such a panel.

The existence of such procedures in a BIT or FTA represents a boon to the investment climate, even though the number of cases tried is typically very small (e.g., a total of just over 30 cases have been brought under NAFTA’s Chapter 11 in all three countries over the past ten years). The value of the investments involved in these cases is small compared to the hundreds of billions of dollars that U.S. companies have invested in countries with which the United States has BITs or FTAs that feature ISDPs.

Trade Facilitation: Transparency and Efficiency in Commerce

In addition to free trade agreements, AACCLA and the U.S. Chamber believe implementation of trade facilitation (TF) measures by Western Hemisphere governments offers the chance to make the procedures of international commerce more transparent and rules-based in the Western Hemisphere. TF consists of measures to make ports (air and sea) and customs more efficient through improvement of their administration and procedures. TF aims to make international trade faster and cheaper through such steps as requiring the electronic transmittal of customs information in a standard format — thus doing away with clumsy forms.

For Latin America and the Caribbean, TF has a special appeal because it allows the region to leverage a key advantage the region has over Asia — namely, its

relative proximity to the U.S. marketplace and the faster “speed to market” this can afford. In light of the ongoing global war on terrorism, TF has added appeal for the United States because it can allow customs and border protection officers to focus their attention on shipments deemed to present the highest risks.

While recent free trade agreements negotiated by the United States and some other countries include excellent TF measures (DR-CAFTA is the gold standard in this regard), countries need not conclude international trade agreements to reap the gains of TF. Governments may implement TF measures and see benefits immediately, regardless of whether other nations reciprocate.

AACCLA and the U.S. Chamber are working to raise awareness of the promise of TF as a way to enhance transparency in business while lowering the cost of commerce. To this end, AACCLA President James D. Fendell will participate in the June 5 private-sector forum taking place at the XXXV General Assembly of the Organization of American States in Fort Lauderdale, Florida. Our aim is to place TF on the agenda of the Western Hemisphere’s foreign ministers and, ultimately, the Western Hemisphere heads of state and government, who will meet in Argentina for the IV Summit of the Americas in November.

It is worth noting that the global Doha Development Agenda negotiations include a working group on TF, and an ambitious outcome in these talks is a top priority for the Chamber and AACCLA. Unilateral adoption of TF measures is extremely useful, but a common global approach could yield even greater benefits: a World Bank study has reported that one-third of the benefits from the Doha Development Agenda negotiations would come from TF.

Conclusion

At a time when the economy is witnessing more international competition than ever before, the ability of the United States and other Western Hemisphere nations to thrive will depend increasingly on whether our governments provide an economic environment based on the principles of transparency and the rule of law. Without adherence to these principles, a stable and predictable investment climate will remain elusive. By extending ambitious and comprehensive free trade agreements such as DR-CAFTA to other Western Hemisphere countries — and by acting as a champion of trade facilitation measures designed to make international commerce faster, cheaper, and more transparent — the United States can make a genuine contribution to democratic governance among our closest neighbors.